



## Press release

**The College of Competition Prosecutors of the Belgian Competition Council found that Electrabel (GDF Suez) abused its dominant position on the Belgian market for generation, wholesale and trading of electricity as well as on the Belgian market for supply of tertiary reserve services**

Brussels, 7 February 2013

The College of Competition Prosecutors has filed today a reasoned report with the Competition Council as a result of practices revealed by the Belgian Regulator for Electricity and Gas (hereafter, the **CREG**) in its study 860 concerning conducts on the wholesale market for electricity in Belgium in 2007 and the first six months of 2008.

In the framework of this study, the CREG examined (i) a certain number of abnormal price peaks on the Belgian power exchange Belpex as well as (ii) conducts of Electrabel and SPE in relation with these peaks in 2007 and the first six months of 2008. The CREG could find, based on data available at the time of its study, that during the year 2007 and the first six months of 2008, Electrabel did not use all its available capacities while submitting at the same time purchase orders with very high bid prices on Belpex. These conducts contributed, among others, to a global price increase on the Belpex exchange.

The investigation has been conducted by the College of Competition Prosecutors with the collaboration of the Directorate General of Competition of the FPS Economy. Moreover, the College of Competition Prosecutors cooperated closely with the CREG through the nomination of experts from this regulator in order to analyse some relevant elements revealed by the investigation.

In its report the College of Competition Prosecutors brings forward the existence of an abuse of dominant position, on account of Electrabel, forbidden by art. 3 of the Belgian Competition Act consolidated on the 15<sup>th</sup> of September 2006 and by article 102 of the treaty on the functioning of the European Union.

The established infringements as regards Electrabel concerns, on the one hand, capacity withholding by Electrabel on the Belgian market for generation, wholesale and trading of electricity from 2007 to 2010, and, on the other hand, fictive sale and double use of tertiary reserve on the Belgian market for the supply of tertiary reserve services from 2006 to 2007.

This case will be brought before a decision making panel of the Belgian Competition Authority, where Electrabel will be able to defend itself. Electrabel can submit a reply in writing, and will be heard at an oral hearing. The possibility of defending itself before a decision making panel of the Belgian Competition Authority provides Electrabel with the possibility of bringing all factual elements and relates as much to the dispute of the facts on which the report is based as to the application of the law.

The decision making panel of the Belgian Competition Authority will decide whether or not there was an infringement of competition law. The report does not prejudge this decision.

Finally, the College of Competition Prosecutors would like to stress that both Electrabel and the GDF Suez group effectively cooperated with the College during its investigation. In order to reward this cooperation, the College proposed a substantial reduction of a possible fine that would be imposed by the Competition Council.

## Notes

1. On 11 and 12 June 2009, the CREG made public some of the conclusions of its study 860 concerning conducts on the wholesale market for electricity in Belgium in 2007 and the first six months of 2008.
2. The Directorate General of Competition conducted dawn raids at the premises of several companies active in the wholesale of electricity in Belgium from 22 to 29 September 2009. These dawn raids made it possible to collect more than 12,000 pages of paper documents.
3. The investigation required the individual analysis of more than 1 million orders submitted by Electrabel on Belpex. In total, more than 30,000 pages of paper documents (and as many pages of electronic documents) were collected during the investigation. The final reasoned report which was filed today with the Competition Council is more than 600 pages long.
4. Only some of the practices revealed by the CREG in its study 860 were considered in the reasoned report as being abusive. Indeed, the College of Competition Prosecutors could find, among others, that some of the critical data, communicated by Electrabel and on which the CREG based its analysis, were not correct. On the other hand, the reasoned report of the College went beyond June 2008 (the last month analysed in the study 860) in its analysis of the practices.
5. Following the investigation, it was estimated that the practices of withholding could result in a damage of EUR 33 to 49 million for the consumers/customers from 2007 to 2010. It should be noted that the practices had also some effects in France and the Netherlands.
6. Following the investigation, it was estimated that the practices of fictive sale and double use could result in a damage of EUR 7 million for the consumers/customers from 2006 to 2007.
7. To maintain frequency and voltage and reduce imbalances between production and consumption or congestion on the grid, the transmission system operator (Elia) must have power reserves. The tertiary reserve is one of these power reserves. It allows Elia to deal with a major or systematic imbalance in the control area and to resolve major congestion problems. It is activated manually at the request of Elia. It must be available within 15 minutes and can be supplied by both spinning and non-spinning units, provided that these last units can be started within less than 15 minutes. Elia purchases tertiary reserve through tender offers. Therefore, the obligations of Elia and its supplier of tertiary reserve origin from a contract. From 2006 to 2011, several contracts have been concluded between Elia and Electrabel concerning the supply of tertiary reserve services.

## For further information:

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